



SECRETARY OF THE AIR FORCE
WASHINGTON

MEMORANDUM FOR ALMAJCOM-FOA/CC
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25 OCT 2005

FROM: SAF/OS
1670 Air Force Pentagon
Washington DC 20330-1670

SUBJECT: Potential Post-Employment Ethics Liability of Requirements Personnel

The Air Force Inspector General recently investigated allegations that a general officer, who ran a MAJCOM requirements directorate, violated post-employment ethics restrictions after he retired and was employed by a DOD contractor. After a full investigation, the Inspector General concluded that the retired officer had not violated the rules. However, the Inspector General also concluded that the conventional wisdom on how post-employment ethics rules apply to requirements and procurement work is not well understood by employees or contractors.

Often in the past, requirements personnel established contract requirements, which were transferred to procurement personnel. The procurement personnel, in turn, advertised, evaluated, and awarded the contract. Conventional wisdom held that requirements personnel avoided pre- and post-employment ethics restrictions because they did not "personally and substantially" work on the contract action or supervise subordinates who did.

In the case referenced above, requirements personnel continued working closely on the project with procurement personnel, up to and after the contract award. Since this approach may give the Air Force customer greater influence and insight into the final service or product selected, from an ethics standpoint, there is no firewall between establishing the requirements and awarding the contract. Consequently, those who work on either the requirements or the award must carefully consider the ethics restrictions established by 18 U.S.C. §§ 207 and 208 if they later pursue employment with an interested contractor.

The Inspector General's memo and background paper are attached for your further consideration. Anyone associated with developing requirements or awarding contracts must seek advice from an ethics counselor prior to engaging in employment discussions.

My points of contact for this issue is Ms Jane Love, SAF/GCA, Jane.Love@pentagon.af.mil, DSN 227- 7693 or Mr Greg Snyder, SAF/AQCP, gregory.snyder@pentagon.af.mil, DSN 425-7058.

A handwritten signature in black ink, appearing to read "Pete Geren", with a stylized, flowing script.

Pete Geren
Acting Secretary of the Air Force

Attachment:
SAF/IG Memo, 22 Jun 05, with attachment



Office of the Secretary

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

JUN 22 2005

MEMORANDUM FOR SAF/AQ
AF/JA

FROM: SAF/IG

SUBJECT: Potential Post-Employment Ethics Liability of Requirements Personnel

We recently completed an inspector general investigation regarding allegations of post-employment ethics violations. As an outgrowth of the investigation, we discovered that subtle shifts in some procurement practices have made requirements personnel, particularly MAJCOM Directors of Requirements, more vulnerable to the post-employment restrictions of 18 U.S.C. 207. It became clear this increased vulnerability was not fully understood or correctly interpreted by the former requirements individual involved or the major defense contractor that subsequently employed him.

Given the current sensitivity of this subject, the increased involvement of requirements personnel in source selections, and the apparent misinterpretation of relevant statutes by a major defense contractor, I believe it is essential that we make clear to MAJCOM requirements personnel, defense contractors, and Air Force ethics advisors that requirements personnel may incur greater post-employment restrictions than they may have expected under past procurement practices.

An extract of the key findings from the IG report are included in the attached SAF/IGS background paper for your review. Please notify me of action taken to disseminate this information so that we may close out the investigation. If you have any questions concerning this information, please contact me or Col Alex M. McDowell at 693-5032.

VR -

A handwritten signature in dark ink, appearing to read "Steven R. Polk".

STEVEN R. POLK
Lieutenant General, USAF
The Inspector General

Attachment:
Background Paper

BACKGROUND PAPER
ON
POST-EMPLOYMENT ETHICS LIABILITY ISSUES
HIGHLIGHTED BY RECENT INSPECTOR GENERAL INVESTIGATION

1. SAF/IGS recently completed an inspector general investigation regarding allegations of post-employment ethics violations. Both the subject of this investigation, a former MAJCOM Director of Requirements, and the major defense contractor he is now employed by, asserted that there was a "clear distinction between requirements work and procurement work," and by implication that a government employee working in a MAJCOM requirements directorate would not be subject to post-employment restrictions articulated in 18 U.S.C. 207(a)(1) and 207(a)(2). Although the investigation revealed that the subject in this specific case had not violated the above statutes, this was due to his timely replacement as MAJCOM/DR rather than the perceived "firewall" between requirements work and procurement work. The investigation revealed a subtle shift to a much more collaborative acquisition strategy within some programs that effectively blurs the lines between "requirements work" and "procurement work." For example, subordinates of MAJCOM/DRs are voting members in source selections and contracting officers and contractors are involved in changing Operational Requirements Documents. This level of interaction potentially places Section 207 liability upon requirements personnel, particularly for MAJCOM Directors of Requirements, who may bear "official responsibility" as outlined in Section 207(a)(2) without being personally involved. It is also notable to recognize that these individuals cannot avoid the implications of this "official responsibility" by recusal, or self-elimination, from the proceeding. Likewise, "detailing" of requirements personnel to the acquisition organization does not relieve the MAJCOM/DR of "official responsibility," regardless of the level of personal involvement on the MAJCOM/DR's part.
2. In the specific case investigated, counsel for the subject's employer cited numerous Office of Government Ethics examples and MAJCOM/JA legal opinions rendered on officials other than the subject to ultimately conclude that "...in applying Section 207, there is a clear distinction between requirements work and procurement work." The underlying assumption in every example, opinion, or ruling offered by the subject's employer to support this argument of separation is that once the user articulated the requirements, as was accomplished by the

MAJCOM/DR in publishing the Operational Requirements Document, the actual acquisition is completely handed off to a separate organization, such as AFMC, to conduct procurement actions including source selections. It also assumes that this handoff occurs before any "specific parties," i.e. potential contractors, are identified. If the MAJCOM/DR's involvement ended with the publication of the Operational Requirements Document, this analysis would be correct. This was not the case, however.

3. The Single Acquisition Management Plan and Source Selection Plan for the program in question clearly outlined a much more collaborative arrangement between the MAJCOM requirements personnel and acquisition personnel. Members of both organizations evaluated contractor proposals and made recommendations to the Source Selection Authority. Indeed, the Operational Requirements Document was purposefully published in draft form so that the requirements could be altered based on the contractor's proposals. In contrast to the employer counsel's conclusion, no automatic "firewall" exists under these circumstances. Program managers interviewed during this investigation indicated that this collaborative approach is an increasingly common occurrence, particularly for large, complex programs.

4. While this unique acquisition strategy appears to offer greater flexibility and increases the odds that end-user requirements are met, it also places a greater burden on both requirements personnel and prospective future employers to consult with Air Force ethics officials regarding each specific case to insure that employment restrictions of Section 207 have not been triggered. In many cases triggering the statutes may first occur years after retirement by a change in the retiree's specific job responsibilities. Air Force ethics officials stand ready to assist retirees with these determinations, and we suggest they be consulted not only at retirement, but also any time the retiree contemplates a significant shift in job responsibilities that involve representation back to the Air Force.